IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Criminal Appeal No.371/2000.

Date of Decision :14th September, 2007.

State of H.P. …Appellant.

Versus:

Pramodh Kumar. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent. Mr.Virender Rathore, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 18th November, 1999 passed by the Judicial Magistrate, Ist Class (1), Dharamshala in Criminal Case No.83-III/96 titled as State of H.P. Vs. Parmodh Kumar acquitting the accused of the charge offence.

F.I.R. No.388 of 1995 dated 27th October, 1995 was registered with Police Station, Dharamsala for an offence under

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Section 61(1)(a) of the Punjab Excise Act as applicable to the State of Himachal Pradesh, inter alia, stating that on 27th October, 1995 at about 4.30 P.M. the police officials were on patrolling duty at a place known as Charan Khud. The accused came on his scooter from direction known as Dari and on checking the scooter it was found that he was carrying eighteen bottles of country made liquor and six bottles of Commando XXX Rum in a bag kept in the scooter. The same was taken into possession vide Ext.PW-2/A and Rukka (Ext.PW-2/B) was prepared on the basis of which F.I.R. was registered against the accused. The report of the Chemical Analyst (Ext.PA) was obtained and the statements of the witnesses during the investigation were recorded.

After completion of the investigation, challen was presented in the Court and charges against the accused under Section 61(1)(a) of the Punjab Excise Act as applicable to the State of H.P. were framed. The accused pleaded not guilty and claimed trial.

The prosecution in all examined five witnesses, namely, Onkar Singh (PW-1), Devinder Kumar (PW-2), Raj Kumar (PW-3), Head Constable Onkar Singh (PW-4) and S.I.Dile Ram (PW-5). The only statement of PW-2 is relevant and other witnesses are formal in nature. The statement of the accused under Section 313 Cr.P.C. was also recorded in which the

accused has pleaded innocence as having been falsely implicated in the case.

The Court below has acquitted the accused on the ground that no independent witness has been associated by the Police and the testimony of PW-2 alone does not itself inspire confidence to prove the guilt of the accused beyond reasonable doubt. Another reason given by the Court is that the statement of the Investigating Officer was not recorded.

I have examined the statement of PW-2 and in my view there is sufficient explanation for the prosecution to have not associated the independent witnesses inasmuch as he has deposed that he had sent Head Constable Onkar Singh to get the witnesses from the neighbourhood but however, none came forward to associate themselves with the recovery. In my view, the reasoning given by the Court below is contrary to the material on record. Further, mere non examination of the Investigating Officer is also not fatal to the case of the prosecution as has already been held by the apex Court in ***Behari Prasad etc. etc. Vs. State of Biha***r , 1961 (1) Crimes 11 (SC).

However, in my view the accused needs to be acquitted on the ground that the case of the prosecution was not put to him under Section 313 Cr.P.C. As per the case of the prosecution in F.I.R. Ext.PW-5/A) and the version of PW-2, the recovery was effected from the scooter which was being driven

by the accused. However, in Question No.3 case put to the accused is that the raid was conducted in the shop of the accused from where the liquor was recovered. It is the case of the prosecution that the recovery was effected during the course of general 'Nakabandi' whereas in Question No.2 case put to the accused is that the police had acted on secret information that the accused was in the habit of selling liquor to the customer at his shop, therefore, in my view the case of the prosecution was not put to the accused and he cannot be convicted for the aforesaid offence.

I see no reason to interfere with the finding acquitting the accused of the charged offence. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 14, 2007(R)